

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Federal-State Joint Board on Universal Service)	
)	
Petition for FCC Agreement in)	CC Docket No. 96-45
Redefining the Service Areas of Citizens)	
Telecommunications Company of West)	
Virginia, dba Frontier Communications)	
of West Virginia in the State of West)	
Virginia Pursuant to 47 C.F.R. Section)	
54.207(c))	

COMMENTS OF EASTERBROOKE CELLULAR CORPORATION

Easterbrooke Cellular Corporation, dba Cellular One ("Easterbrooke"), by its counsel and pursuant to the *Public Notice* released by the Federal Communications Commission ("FCC") on October 25, 2004 ("ETC Public Notice"), hereby provides comments in support of the petition filed by the Public Service Commission of West Virginia ("PSC" or "Commission") on October 18, 2004 ("Petition") seeking FCC concurrence in the PSC's proposed redefinition of the service areas of Citizens Telecommunications Company of West Virginia, dba Frontier Communications of West Virginia ("Frontier"), a rural telephone company. The PSC's Petition should promptly be deemed approved by the FCC to facilitate the provision of universal service to consumers in West Virginia Rural Service Area 5 ("WV RSA 5").

I. BACKGROUND

By a final Commission Order entered on August 27, 2004, the PSC designated Easterbrooke as an Eligible Telecommunications Carrier ("ETC") within its FCC authorized service area, which is served by Frontier, with a caveat regarding portions of certain of Frontier's

wire centers that fall within the boundaries of Easterbrooke's authorized service area.¹ In its Order the PSC directed Staff to file a petition with the FCC seeking the FCC's concurrence in the PSC's redefinition of Frontier's service area. The PSC essentially affirmed the Recommended Decision entered by the Chief Administrative Law Judge ("ALJ") on May 14, 2004.² While Frontier filed exceptions to the ALJ's decision, Frontier failed to appeal the PSC's Order. Thus, the PSC's Order is now a final order of the Commission.

The PSC issued its Order after a hearing was held before the ALJ, the ALJ issued her Recommended Decision, and Easterbrooke and the intervenors in the proceeding were afforded sufficient opportunities to submit testimony, briefs, exceptions to the ALJ's Recommended Decision, and replies to such exceptions. Both the ALJ and the PSC issued detailed and complete decisions, which analyzed at great length how granting Easterbrooke ETC status in the designated area would promote the twin goals of universal service and competition, taking into account the recommendations of the Federal-State Joint Board on Universal Service ("Joint Board"). The ALJ and PSC also explained in detail why Easterbrooke's ETC designation and the proposed service area redefinition with respect to Frontier would not raise the concerns posed by the Joint Board and were consistent with FCC precedent.

¹ See *Easterbrooke Cellular Corporation, doing business as Cellular One; Petition for consent and approval to be designated as an eligible telecommunications carrier in the areas served by Citizens Telecommunications Company of West Virginia, doing business as Frontier Communications of West Virginia*, Case No. 03-0935-T-PC, Commission Order (Aug. 27, 2004), available at <http://www.psc.state.wv.us/orders/default.htm>. The PSC's Order instructed Easterbrooke to notify the PSC whether it would commit to serving the entirety of Frontier's Walkersville, Thomas, and Davis wire centers, even though such wire centers are located partially outside of Easterbrooke's licensed service area, or whether Easterbrooke would withdraw from its ETC petition the portions of those wire centers which are located within Easterbrooke's licensed service area. Accordingly, on October 6, 2004, Easterbrooke filed with the PSC an application for a certificate of convenience of necessity to provide resold local exchange service in Frontier's Walkersville, Thomas, and Davis wire centers located in Lewis and Grant Counties.

² See *Easterbrooke Cellular Corporation, doing business as Cellular One; Petition for consent and approval to be designated as an eligible telecommunications carrier in the areas served by Citizens Telecommunications Company of West Virginia, doing business as Frontier Communications of West Virginia*, Case No. 03-0935-T-PC, Recommended Decision (May 14, 2004), available at <http://www.psc.state.wv.us/orders/default.htm>.

II. THE FCC SHOULD PROMPTLY CONCUR WITH THE PSC'S PETITION

It is appropriate for the FCC to deem the PSC's Petition approved, rather than initiate a proceeding to consider the Petition. The PSC has exercised the authority granted to it under Section 214(e) of the Communications Act of 1934, as amended ("Act") to designate Easterbrooke as an ETC and define the relevant service area of Frontier. Now, pursuant to the Act and Section 54.207(c) of the FCC's regulations, the PSC seeks the FCC's concurrence with the Commission's decision. Clearly, the PSC has found no reason to deny Easterbrooke's request for ETC designation or desist from redefining Frontier's service area, and the FCC should concur in the PSC's decision. The PSC, having first-hand knowledge of the particular consumers and geographic area that would be served by Easterbrooke's ETC designation, rendered a decision that will best promote universal service in rural areas of West Virginia. In light of the extensive record developed in the PSC proceeding and the vast amount of time and resources that the PSC devoted to its consideration of Easterbrooke's petition for ETC designation, it is not necessary for the FCC to initiate a proceeding to consider the PSC's Petition. Rather, under the circumstances, it is entirely appropriate for the FCC to deem the PSC's Petition approved.

The mechanism provided in Section 214(e)(5) of the Act and Section 54.207(c) of the FCC's regulations enables wireless carriers that otherwise qualify for ETC designation to receive universal service support in study areas that they cannot serve entirely via their wireless facilities. The redefinition process has been invoked on numerous occasions, and ETC applicants and state commissions alike have taken advantage of the process.³ The PSC's Petition

³ See e.g., *Petition of RCC Minnesota, Inc. for Designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2)*, Docket No. 04-RCCT-338-ETC (KS Corp. Comm'n. Sept. 30, 2004); *Application of WWC License LLC, d/b/a CellularOne, for redefinition of its service area as a designated Eligible Telecommunications*

sets forth the PSC's redefinition proposal and analyzes its redefinition request taking into account the recommendations of the Joint Board, all in accordance with Section 54.207(c) of the FCC's regulations. As the PSC advocated in its Petition, its redefinition proposal is consistent with Federal universal service policy, would not pose anti-competitive threats, such as creamskimming, to Frontier, and is not prohibited by FCC precedent.

The ALJ provided a thorough analysis of the redefinition issue in her Recommended Decision and offered strong support for her conclusions. The ALJ, and ultimately the PSC, based their conclusions on the extensive record developed in the proceeding, which included a hearing on the issues, briefs and reply briefs, and exceptions and replies to exceptions filed in response to the ALJ's Recommended Decision. The record includes extensive testimony regarding the positive impact on universal service of designating Easterbrooke as an ETC in the proposed service area, the absence of any potential creamskimming on Easterbrooke's part, the impact of redefinition on Frontier's status as a rural carrier, and any administrative burdens associated with service area redefinition. Considering all the evidence, the ALJ rightly concluded, and the PSC affirmed, that granting Easterbrooke ETC status and redefining Frontier's service area would serve the public interest and would not pose the problems that the intervenors had alleged.⁴

Carrier, Docket No. 04-3030 (NV PUC Aug. 12, 2004); *RCC Minnesota, Inc. Application for Designation as an Eligible Telecommunications Carrier, Pursuant to the Telecommunications Act of 1996*, Docket No. UM 1083 (OR PUC June 24, 2004); *United States Cellular Corporation Application for Designation as an Eligible Telecommunications Carrier, Pursuant to the Telecommunications Act of 1996*, Docket No. UM 1084 (OR PUC June 24, 2004); *Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier in Wisconsin*, Docket No. 8225-TI-102 (Wisc. PSC Dec. 20, 2002)

⁴ The ALJ explained, and the PSC affirmed, that "The FCC has previously concluded that, when a CMRS licensed cellular provider seeks ETC designation for the entirety of its licensed service area, there can be a presumption that it is not attempting to cream skin, because it is attempting to obtain ETC designation for all points in the service territory which it has. Further, the FCC has concluded that, when a rural telephone company has filed a disaggregation plan with the FCC, so that its high-cost support is targeted principally to its high-cost wire centers, as has been done by Frontier, concerns about cream skinning are significantly minimized and reduced." *Recommended Decision* at 41. The ALJ further concluded that "Easterbrooke is not attempting to cream skim

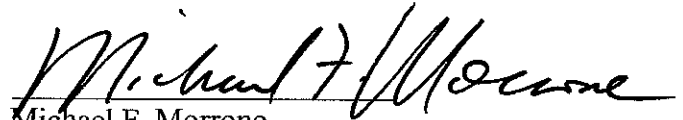
III. CONCLUSION

With universal service support Easterbrooke will provide consumers within WV RSA 5 with the highest quality service possible, advanced services, affordable rates that are comparable to the rates offered to consumers in urban areas, and a variety of rate plans. In light of these many important benefits and the extensive record established through hearing testimony, briefs, and other pleadings, it is entirely appropriate for the FCC to concur with the PSC's redefinition request. Absent any persuasive showing of a credible harm that would result from granting the PSC's Petition, the FCC should allow the PSC's Petition to take effect automatically 90 days following the date of the ETC Public Notice.

Respectfully Submitted,

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Frontier's service territory and . . . granting ETC designation in the specified wire centers will not permit cream skimming by Easterbrooke, since it is obligated to serve all areas and all customers within its designation." *Id.*